

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

HARTFORD LIFE INSURANCE
COMPANY,

Petitioner,

vs.

FRANK F. DOUDS, HERMAN J. DOUDS
and REBECCA E. McCONKEY, Execu-
tors of the Last Will and Testament
of ALONZO J. DOUDS, Deceased,
Respondents.

No. 265.

On Writ of Certiorari to the Supreme Court of Ohio.

REPLY BRIEF OF PETITIONER.

MAY IT PLEASE THE COURT:

It is contended by respondents that the denial by this Court of the former petition for a writ of error in this case, and likewise the petition for certiorari in the Langdale case, to review the judgment of the Supreme Court of Ohio in denying petitioner's application for a writ of prohibition to restrain the trial court from entertaining jurisdiction of these suits, constituted a final judgment that the courts of Ohio

had jurisdiction of the subject matter of these suits and that the question is no longer open for review by this Court. This contention is, we submit, without merit. The petition for the writ of error to review the judgment of the Supreme Court of Ohio denying the petitioner's application for a writ of prohibition was denied by this Court because the right, if any, to a review of that judgment was by certiorari, and not by writ of error (*Hartford Life v. Douds*, 245 U. S. 641). No reason was given by this Court for its denial of the petition for certiorari in the *Langdale* case (*Hartford Life v. Langdale*, 248 U. S. 562).

The holding of the Ohio Supreme Court in denying the petition for a writ of prohibition in these cases (*State ex rel. Hartford Life Ins. Co. v. Douds*, 118 N. E. 1086) was predicated upon prior decisions of that Court holding that the question of the jurisdiction of the Ohio courts over the subject matter of these suits was reviewable upon an appeal from a final judgment; in other words, that *prohibition* was *not the proper remedy to secure a review of the action of the trial court in overruling petitioner's demurrer to respondents' bill of complaint on the ground that the courts of Ohio were without jurisdiction of the subject matter of these suits, and the fact that upon an appeal from a final judgment against petitioner the Ohio Supreme Court entertained jurisdiction of such appeal and determined*

the question of jurisdiction of the courts of Ohio over the subject matter of these suits, shows conclusively that its ruling in the prohibition proceedings was not a final judgment upon that issue, otherwise it would not have considered or determined the merits of the jurisdiction question upon such appeal. Clearly, therefore, as the judgment of the Ohio Supreme Court denying the petitioner's application for a writ of prohibition was not a final judgment in the case, this Court could not review that judgment either upon a writ of certiorari or upon a writ of error, which probably was the reason this Court refused to grant the writ of certiorari in the Langdale case.

But be that as it may, it is well settled that the denial of either a petition for writ of error or a petition for certiorari by this Court constitutes no ruling by this Court upon the merits of the case, and does not preclude the Court upon a subsequent writ of error, or certiorari, from reviewing the judgment of the State Court.

In the recent case of *United States v. Carver*, 43 Sup. Ct. Rep. 181, 182, the Court said:

“The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times.”

See, also, to the same effect, Hamilton Brown Shoe Company v. Wolfe Brothers, 240 U. S. 251, 258.

Respectfully submitted,

HARRY B. ARNOLD,
JAMES C. JONES,
FRANK H. SULLIVAN,
JAMES C. JONES, JR.,
Counsel for Petitioner.

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vs.

ROBERT H. LANGDALE,

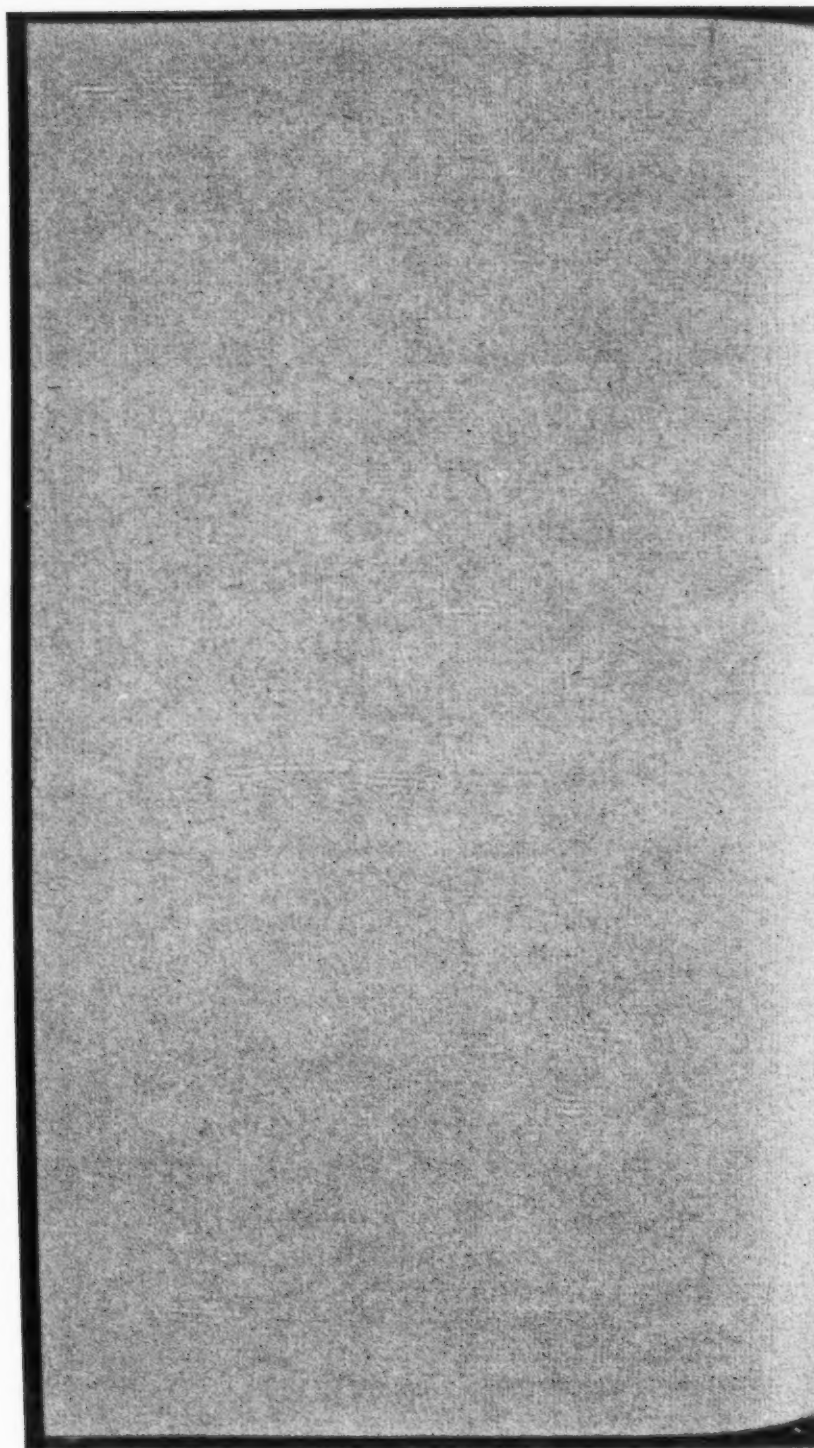
Respondent.

No. 271.

On Writ of Certiorari to the Supreme Court of the
State of Ohio.

**SUGGESTIONS OF PETITIONERS IN OPPOSI-
TION TO RESPONDENTS' MOTIONS TO
AFFIRM JUDGMENT.**

**LON O. HOCKER,
J. C. JONES, JR.,**
Counsel for Petitioners.



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The respondents have filed a motion to affirm the judgments of the Ohio Supreme Court, in the above named causes, on the ground that the *writs of error* allowed in said cases were taken for delay only, and

that the questions on which the decision depends are frivolous. There were no *writs of error* allowed herein. On the contrary, these cases are here on writs of certiorari allowed by this Court to the Supreme Court of Ohio.

We find nothing in the rules which warrants the filing of a motion for the affirmance of a judgment on the ground that the writ of certiorari was granted by this Court for the purpose of delay only, or that the questions involved are frivolous. The granting of a writ of certiorari by this Court is discretionary, and when such a writ is granted there is presumably some merit in the questions involved.

We will not at this time enter into a discussion of the constitutional questions here involved. The Court will find these questions considered and discussed in the brief filed by petitioner in support of its petition for the writs of certiorari. That the questions involved are meritorious is manifest from the fact that the New York Court of Appeals in *Sauerbrunn v. Hartford Life Insurance Company*, 220 N. Y. 363, 115 N. E. 1001, and the Supreme Court of Missouri in *State ex rel. Hartford Life Insurance Company v. Shain*, 245 Mo. 78, which were similar to the suit here involved, hold, contrary to the Ohio Supreme Court in these cases, that the courts of those states

had no jurisdiction of the subject matter of the suit or power to grant the relief prayed for.

We submit that the respondents' motions to affirm should be denied.

Respectfully submitted,

Am. O. Locke.....

James C. Jones, Jr......
Counsel for Petitioners.